

Notice of Allowability

Application No.

10/823,396

Examiner

S. Devi, Ph.D.

Applicant(s)

JONES ET AL.

Art Unit

1645

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address—

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Applicants' amendment filed 9/19/07.
2. ☒ The allowed claim(s) are 4 and 6-10, now renumbered as claims 1 and 2-6 respectively.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

ATTACHMENT TO NOTICE OF ALLOWABILITY

Applicants' Amendment

- 1) Acknowledgment is made of Applicants' election filed 09/19/07 in response to the non-final Office Action mailed 03/20/07.

Examiner's Amendment

- 2) An Examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to Applicants, an amendment may be filed as provided by 37 C.F.R. 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee. The authorization to prepare this Examiner's amendment was provided by Ms. Shilpa Patel in a telephonic interview on 04 December 2007.

This application has been amended as indicated below:

(A) Claims 1-3, 5 and 11-69 have been canceled.

(B) Claim 8 has been amended as indicated below:

--Claim 8 (Currently amended). An expression vector comprising the nucleic acid molecule of claim 4, 6 or 7 operatively associated with an expression control sequence.--

Status of Claims

- 3) Claims 1-5, 7 and 9 have been amended via the amendment filed 09/19/07.
Claims 1-3, 5 and 11-69 have been canceled via this Examiner's amendment.
Claim 8 has been amended via this Examiner's amendment.
Claims 1, 4 and 8-10 are pending and are under examination.

Objection(s) Withdrawn

- 4) The objection to the specification made in paragraph 6 of the Office Action mailed 03/20/07 is withdrawn in light of Applicants' amendment to the specification.

Rejection(s) Moot

- 5) The rejection of claims 1, 2, 5 and those dependent therefrom made in paragraph 10 of the Office Action mailed 03/20/07 under 35 U.S.C. § 112, first paragraph, as containing inadequate written description, is moot in light of the cancellation of claims 1, 2 and 5.

6) The rejection of claims 1, 2 and 5 made in paragraph 11 of the Office Action mailed 03/20/07 under 35 U.S.C. § 112, first paragraph, as being non-enabling with regard to the scope, is moot in light of the cancellation of these claims.

7) The rejection of claim 2 made in paragraph 13(a) of the Office Action mailed 3/20/07 under 35 U.S.C § 112, second paragraph, as being indefinite, is moot in light of the cancellation of the claim.

8) The rejection of claim 1 made in paragraph 15 of the Office Action mailed 3/20/07 under 35 U.S.C § 102(b) as being anticipated by Bourgogne *et al.* (In: *Abstracts of the 101st General Meeting of the American Society for Microbiology*, Orlando, FL, USA, page 127, 20-24 May 2001 – Applicants' IDS), is moot in light of the cancellation of the claim.

Rejection(s) Withdrawn

9) The rejection of claim 9 (not 8 as mistyped inadvertently) made in paragraph 9 of the Office Action mailed 03/20/07 under 35 U.S.C. § 101 as being directed to non-statutory subject matter, is withdrawn in light of Applicants' amendment to claim 9.

10) The rejection of claims 8-10 made in paragraph 10 of the Office Action mailed 03/20/07 under 35 U.S.C. § 112, first paragraph, as containing inadequate written description, is withdrawn in light of the amendment made to claim 8.

11) The rejection of claims 8-10 made in paragraph 11 of the Office Action mailed 03/20/07 under 35 U.S.C. § 112, first paragraph, as being non-enabling with regard to the scope, is withdrawn in light of the amendment made to claim 8.

12) The rejection of claims 8-10 made in paragraph 13(a) of the Office Action mailed 3/20/07 under 35 U.S.C § 112, second paragraph, as being indefinite, is withdrawn in light of the amendment to claim 8.

13) The rejection of claims 8-10 made in paragraph 15 of the Office Action mailed 3/20/07 under 35 U.S.C § 102(b) as being anticipated by Bourgogne *et al.* (In: *Abstracts of the 101st General Meeting of the American Society for Microbiology*, Orlando, FL, USA, page 127, 20-24 May 2001 – Applicants' IDS), is withdrawn in light of the amendment to claim 8.

Remarks

14) Claims 4 and 6-10, now renumbered as claims 1 and 2-6 respectively, are allowed.

15) Papers related to this application may be submitted to Group 1600, AU 1645 by facsimile transmission. The Fax number for submission of amendments, responses and/or papers is (571) 273-8300, which receives transmissions 24 hours a day and 7 days a week.

16) Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAG or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.Mov>. Should you have questions on access to the Private PAA system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (in USA or CANADA) or 571-272-1000.

17) Any inquiry concerning this communication or earlier communications from the Examiner should be directed to S. Devi, Ph.D., whose telephone number is (571) 272-0854. A message may be left on the Examiner's voice mail system. The Examiner can normally be reached on Monday to Friday from 7.15 a.m. to 4.15 p.m. except one day each bi-week, which would be disclosed on the Examiner's voice mail system.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Shanon Foley, can be reached on (571) 272-0898.

December, 2007


S. DEVI, PH.D.
PRIMARY EXAMINER